

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BANK OF AMERICA, N.A.,

Plaintiff,

Civil Action No. 10-5707 (DLC)

-against-

APOLLO ENTERPRISE SOLUTIONS, LLC,  
APOLLO ENTERPRISE SOLUTIONS, INC., and  
MORIAH PARTNERS, LLC,

DECLARATION OF ADRIAN  
GLUCK

Defendants.

Adrian Gluck declares under penalty of perjury as follows:

1. I am the Executive Vice President and Chief Operating Officer of Apollo Enterprise Solutions, Inc. ("Apollo") defendants named in this action. I reside in Beverly Hills, California. The information contained herein is based on my own personal knowledge.
2. I have a Bachelor of Applied Science and Engineering, an MBA in Technology Marketing, and a PhD in Business Systems Technology. I am a Registered Professional Engineer. I have been in the Information Technology industry since 1970 as Computer Programmer, Systems Analyst, CTO, COO, and CEO. I am the named inventor on several patents issued by the United States Patents and Trademarks Office, in the field of computer web technology.
3. I have reviewed the declaration of Dana Wassam that Bank of America submitted in support of its motion for a preliminary injunction. Ms. Wassam's assertion that "[a] web hit, as used in the Agreement, was understood by both Bank of America and Apollo to mean a

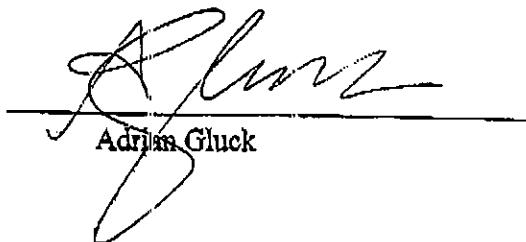
unique visitor accessing the website" is incorrect and completely unsupported. The terms "web hit" and "unique visitor" are terms of art in the industry with different meanings. A web hit is simply a request to a web server for a file. [http://en.wikipedia.org/wiki/Web\\_hit](http://en.wikipedia.org/wiki/Web_hit). The term "unique visitor," on the other hand, refers to a person who visits a Web site more than once within a specified period of time. See [http://webopedia.com/TERM/U/unique\\_visitor.html](http://webopedia.com/TERM/U/unique_visitor.html). A knowledgeable industry person would never use the term "web hit" to mean "unique visitor," and neither Ms. Wassam nor anyone else from Bank of America ever suggested in any conversation with me that the term "web hit" as used in Service Agreement meant "unique visitor." In a meeting with Ms. Wassam I gave her a definition of "web hit" that was substantially the same as the Wikipedia definition, and she agreed that it was correct.

4. On a separate point, Ms. Wassam makes the case that it would be against public policy to shut down the web sites we operate for them. She fails to mention the fact that B of A operates [www.bankofamerica.com](http://www.bankofamerica.com) as their regular customer payment site. The web sites Apollo operates are only used by a fraction of their customer base: delinquent customers. Furthermore, the majority of these delinquent customers can make their payments via [www.bankofamerica.com](http://www.bankofamerica.com) or other means. The reason for B of A's insistence on continuing to use the sites we operate is simply because it saves them money and is more efficient versus alternatives. B of A has means of collecting payments other than through Apollo's website. There is a bill pay feature on [www.bankofamerica.com](http://www.bankofamerica.com). B of A can also obtain payments at branches, through the mail, by phone, and by other means.

5. I have reviewed the declaration from Joseph Konowiecki. I personally heard Ms. Wassam state that the Apollo IDS system could be shut down within 30 days with no adverse affect to Bank of America's business.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: August 16<sup>th</sup>, 2010

  
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Adriam Gluck